

LARRY LAHUSEN
JAY COATES

IBLA 80-281

Decided May 29, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting for purposes of recordation the notices of location for mining claims, U MC 13124-13155.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment --
Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

APPEARANCES: Joseph Coleman, Esq., Dufford, Waldeck & Williams, Grand Junction, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Larry Lahusen and Jay Coates appeal from the decision of the Utah State Office, Bureau of Land Management (BLM), dated December 11, 1979, returning their notices of location for mining claims,

U MC 13124-13155, because they had not filed the notices with BLM within 90 days after the date of location as required by 43 CFR 3833.1-2(b).

Appellants originally located their mining claims, also known as the DV 1-32 claims, on March 18, 1977, recorded them at the San Juan County Recorder's Office on April 14, 1977, and filed copies of the notices of location for the claims with BLM on June 27, 1977. On October 9, 1979, appellants submitted amended notices of location for claims DV 1-7 to the county recorder and filed copies of those amended notices with BLM on October 19, 1979. BLM returned all of the notices because the originals were not filed with BLM until after the expiration of 90 days from the date of location.

In their statement of reasons, appellants argue that under Utah law the process of location includes the act of recording in the appropriate county recorder's office, thus April 14, 1977, should have been considered the date from which the 90 days ran and June 27, 1977, would have then been timely. Furthermore, they contend, regardless of the effectiveness of the 1977 filings, the amended notices for claims DV 1-7 were timely filed. Appellants also argue that 43 CFR 3833.5(f) was not in effect in 1977 and therefore cannot be applied to them. 1/

[1] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

1/ The cited regulation, 43 CFR 3833.5(f) reads:

"(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law."

Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect and must be returned to the appellant. M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim is deemed conclusively to have been abandoned under the terms of the statute. 43 U.S.C. § 1744(c) (1976); Phillip M. Gardiner, 41 IBLA 391 (1979).

Appellants have properly recognized that pursuant to Departmental regulations, the date of location is determined by state law. B. J. Holmes, 46 IBLA 316 (1980); 43 CFR 3833.0-5(h). However, appellants have incorrectly construed Utah law as to when a location occurs. Appellants argue that Utah Code Annotated 40-1-4 (1953) establishes a claimant's recording in the county recorder's office as the final step in the process of locating a mining claim. This is not the case. That section of the Utah Code simply requires that "[w]ithin thirty days after the date of posting the location notice upon the claim the locator * * * must file for record in the office of the county recorder of the county in which such claim is situated a substantial copy of such notice of location." The Utah Supreme Court has held that failure to so record does not result in forfeiture of the locator's title to the claim. Atherley v. Bullion Monarch Uranium Co., 8 Utah 2d 362, 335 P.2d 71 (1959). See R. Gail Tibbetts, 43 IBLA 210, 225 (1979). Therefore location must occur separately and distinct from the additional requirement of recording.

In Atherley v. Bullion Monarch Uranium Co., supra, the Utah Supreme Court said:

Under federal law the only requirements imposed upon a locator of a mining claim is [sic] the discovery of mineral within the limits of the claim, and the segregation of the claim from the public domain by distinctly marking the corners on the ground so that its boundaries can be readily traced. There is no requirement of recording a location notice under federal law. The Utah law relating to the location of mining claims on the public domain provides no additional requirements insofar as the location itself, as distinguished from the record of the claim is concerned. Said law does provide, however, that a copy of the location notice should be filed of record in the office of the county recorder of the county in which the claim is located within 30 days after the location of the claim. The recording of a notice of location is not requisite to the initiation of title under the mining laws, and the failure to record does not forfeit a title properly initiated. The locator's title to a mining claim under the mining laws is initiated by the discovery of mineral coupled with the segregation of the claim from the public domain by the marking of the boundaries thereof.

335 P.2d at 73. Recording of a notice of location serves only the purpose of notifying others of the facts of location. Bradshaw v. Miller, 14 Utah 2d 82, 377 P.2d 781 (1963).

Location and recording are two distinct requirements. Under FLPMA, appellants should have filed copies of their notices of location within 90 days of the date of location of their claims, March 18, 1977. The notices received on June 27, 1977, were not timely filed with BLM.

Appellants next assert that the amended location notices for claims 1-7 were timely filed with BLM and therefore at least these claims are valid. In R. Gail Tibbetts, supra, we discussed amended locations at great length. We noted that generally an amended location relates back to the date of the original location where no adverse rights have intervened, and that no amended location is possible if the original location was void. R. Gail Tibbetts, supra at 217-18. Therefore, filing copies of amended locations more than 2 years after the void original location cannot serve to meet the requirements of section 314 of FLPMA and 43 CFR 3833.1-2(b). Where, as here, the original locations must be deemed abandoned and void under FLPMA and the regulations, the amended locations were of no effect. 2/

Finally, the fact that 43 CFR 3833.5(f) was not in effect in 1977 has no bearing on this case. The provision was added in 1979 to provide express notice that the failure of BLM to notify a mining claimant upon filing that his claims did not comply with FLPMA or Departmental regulations does not prevent BLM from so declaring at a later time. Failure to so notify before promulgation of this regulation did not waive compliance and the regulation did not change BLM's responsibility for ensuring compliance with section 314 of FLPMA.

2/ There does not appear to be any question, as there was in R. Gail Tibbetts, supra, that these documents were amended location notices. Appellants refer to them as such and each is captioned "AMENDED LOCATION NOTICE." In addition, each notice concludes with a statement similar to the following:

"This being the same as DV 1 LODE CLAIM originally located on the 18th day of March, 1977 and recorded on the 14th day of April, 1977 in Book 57 Page 773 in the Office of the Recorder of San Juan County, Utah. This further additional and Amended Certificate of Location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors in the original location of description or record."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

